

अण्डमान तथा
Andaman And



निकोबार राजपत्र
Nicobar Gazette

EXTRAORDINARY

प्राधिकार से प्रकाशित

Published by Authority

[a 270] i kM [ys j] [keokj] 30 fnl [cj] 2013
No. 270, Port Blair, Monday, December 30, 2013

अण्डमान तथा निकोबार प्रशासन
ANDAMAN AND NICOBAR ADMINISTRATION
सचिवालय/SECRETARIAT

NOTIFICATION

Port Blair, dated the 30th December, 2013

No. 266/2013/F.No.3-424/2005-Labour.— In pursuance of Sub-Section (1) of Section 17 of the Industrial Disputes Act, 1947 (Act No. 14 of 1947) read with the Notification No. LR-1(59)/55 dated 13th December, 1955 of the Government of India, Ministry of Labour and A&N Administration's Notification No. 144/2008/ F.No.17-2/2007-Labour dated 7/10/2008, the Secretary (Labour), Andaman and Nicobar Administration, hereby orders for publishing the following Award given by the Labour Court, Andaman and Nicobar Islands, Port Blair against the reference made to the Industrial Tribunal for adjudication vide Notification No. 3-424/2005-Labour dated 22/05/2006 in the matter of an Industrial Dispute between the Deputy Conservator of Forests, Wild life Division - I, Haddo in disengaging/termination the services of S/Shri Philip Tuty and two others by the Deputy Conservator of Forests Wildlife Division.

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT
ANDAMAN AND NICOBAR ISLANDS, PORT BLAIR

I.D. CASE No. 13 of 2006

PRESENT : SHRI SUDIP NIYOGI
JUDGE, LABOUR COURT
ANDAMAN AND NICOBAR ISLANDS
PORT BLAIR

Shri Philip Tuty and two others..... First Party

-Versus-

The Deputy Conservator of Forests,
Wild life Division-I, Haddo..... Second Party

Thursday, 12th day of December, 2013

JUDGEMENT

The instant I.D. case arises in connection with the reference made by the Lt. Governor, Andaman & Nicobar Islands on 22.05.2006 in exercise of the powers conferred under Sub-Section (1) of Section 10 read with Sub-Section (5) of Section 12 and Sub-Section (2-A) of Section 10 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) read with the Notification No. LR-1(59)/55 dated 13th December, 1955 of the Government of India, Ministry of Labour, for adjudication :-

“Whether the action of the Deputy Conservator of Forests, Wildlife Division, Forest Department in disengaging/termination the services of Daily Rated Mazdoors namely (1) Philip Tuty, (2) Suprain Tigga, (3) Smti. Kalpana Haldar is legal and justified? If not, what relief the concerned workmen are entitled to?”

The case of the first party who were the workmen as made out in the written statement of demand is that, they worked under DCF, Wildlife-1, Haddo, Port Blair and according to them, Shri Philip Tuty completed 240 days of services with 12 calendar months during the period from 01.11.1996 to 30.11.1997 Shri Suprain Tigga completed 240 days from 01.10.1997 to 30.09.1998 while Smti. Kalpana Haldar worked for 240 days from 1.12.1995 to 31.07.1996. It is alleged that the services of all of them were terminated illegally without any notice/compensation under Section 25-F of the Industrial Disputes Act, 1947. It is alleged that their request of continuous service was turned down by the second party and the conciliation proceedings which was started to settle the matter also failed.

The second party in their written objection while admitting that all the tree workmen had worked as daily rated mazdoors in their department but claimed, neither Shri Philip Tuty nor Smti. Kalpana Haldar worked 240 days within period of 12 calendar months. However, it is said that Shri Suprain Tigga worked for 267 days between July, 1997 and June 1998 and subsequently their services were terminated. It is alleged that they never approached the authority for their engagement in continuous service.

At the very beginning, be it mentioned that this case was earlier disposed of by an award on 11.11.2011 whereby the 2nd party was directed for making payment of 15 days wages to the two DRMs/Petitioners namely, Shri Suprain Tigga & Smti. Kalpana Haldar each upon holding that their disengagement/termination of services was neither legal nor justified.

However, against the said award, the 1st party moved the Hon’ble Court as no order for reinstatement of the said DRMs was made. During hearing of the said matter in WP 049 of 2012 before the Hon’ble Court, Circuit Bench at Port Blair, as I get from the certified copy of the order of the Hon’ble Court, Ld. Counsel for the 2nd party pointed out the relevant office orders about the engagement of the DRMs. Hon’ble Court by an order on 17.07.2012 was pleased to send back the case on remand for fresh consideration as the said documents/office orders were not produced during hearing before the Labour Court.

It is to be noted here that, after remand of the case, both the parties adduced evidence, 2nd party also produced documents namely, judgement and office orders relating to the appointment of DRMs on different dates which were marked as Ex. A, B, C, D, E, F & G respectively.

During hearing, it is submitted on behalf of the 1st party that in the facts and circumstances of the instant case, the DRMs/Petitioners should be held to be in continuous service as they worked for 240 days or more, within a period of 12 calendar months, but in spite of that they were illegally retrenched. It is further submitted that on behalf of the 1st party citing the observation of the Hon’ble Apex Court in Nilajkar and Others-Vs-Telecom District Manager, a copy of which has been filed, the 1st party should be reinstated to their jobs with back wages.

On behalf of the 2nd party it is urged that, the DRMs were engaged for specific period as made in the office orders and therefore, they cannot claim any order of reinstatement.

I have gone through the materials including the decision as cited on behalf of the 1st party carefully. What I find, though in the instant case, the 1st party comprises three members, but among them Shri Suprain Tigga and Smti. Kalpana Haldar are found to have filed their written Examination-in-Chief on Affidavit separately and also faced cross-examination but the other petitioner Shri Philip Tuty did not file any Examination-in-Chief. So the instant case as regards Philip Tuty is liable to be dismissed.

The office orders which have been exhibited reveal that these two petitioners Shri Suprain Tigga and Smti. Kalpana Haldar were engaged as DRMs for a specific fixed period and subsequently, their service were extended from time to time also for a specific period and there is no reason to believe that this fact was not known to them. The documents further reveal that these two petitioners worked for more than 240 days within a period of 12 calendar months.

It is alleged that the termination of their service was done without complying with the provision of Section 25-F of the Industrial Disputes Act though they were in continuous service for one year in accordance with the provision under Section 25-B of the Industrial Disputes Act.

In this connection, it is to be noted here that the facts of the case as cited on behalf of the first party are different from the ones in our present case. In the said reported case as I find it was observed by the Hon'ble Apex Court that the employer/respondent failed in alleging and proving the ingredients of Section 2 (00) (bb) of the Act and that's why it was held that the termination of services of the appellants (workmen) amounted to retrenchment.

However, in the present case, the facts and circumstances do fall within the category of Section 2 (00) (bb) of the Act as, I have already pointed out, the service of Shri Suprain Tigga and Smti. Kalpana Haldar were for a particular period which was subsequently extended also for a limited period for a number of times and it cannot be said that they were caught unaware with the termination of service. In such a situation, the termination or disengagement does not amount to retrenchment as defined in the Act and consequently, no question arises for compliance with the provision of Section 25 though it is said they (workmen) worked for more than 240 days in 12 calendar months. The settled position of law is that if the appointment is found to be contractual for a fixed term there is no need to comply with Section 25-F as it would be squarely covered by Section 2 (00) (bb) of the Act. {Birla VXL Ltd.-Vs-State of Punjab (1999) 1 LLJ 220 (SC)}. In another case reported in (2001) 3 LLM 627 (GUJ) it was held the termination of employees appointed for fixed periods and posted at various locations, does not amount to retrenchment, as such termination is attracted by Section 2 (00) (bb), irrespective of the length of the period that may have been stipulated in the contract.

Therefore, considering all the facts and circumstances of the case in the light of the legal position I am of opinion that the action of the 2nd party in disengaging or termination of the 1st party cannot be said to be illegal or unjustified.

Accordingly, it is

Awarded

That the action of the Deputy Conservator of Forests, Wild life Division – I, Forest Department in disengaging/termination of the services of Daily Rated Mazdoors Shri Suprain Tigga and Smti. Kalpana Haldar is legal and justified.

The claim of Shri Philip Tuty is also dismissed.

Let a copy of the award be forwarded to the Lt. Governor, A & N Islands for information and due publication in the Official Gazette.

Sd./-
(Shri Sudip Niyogi)
Presiding Officer,
Labour Court.

By order of the Secretary (Labour),

Sd./-
Assistant Secretary (Lab.)